UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

Misc. No. 95-M428

IN RE SGS-THOMSON MICROELECTRONICS, INC.,
Petitioner.

David E. Killough, Kenneth R. O'Rourke, Glenn W. Trost and *John A. Crose, Jr.*, O'Melveny & Myers, of Los Angeles, California, Attorneys for respondent filed a Suggestion for Rehearing In Banc of Order Granting A Writ of Mandamus. Also on the Suggestion for Rehearing were *Samuel H. Weiner* and *Stephen A. Soffen*, Ostrolenk, Faber, Gerb & Soffen, of New York, New York.

David T. Pritikin, Constantine L. Trela, Thomas D. Rein and *Bruce M. Zessar*, Sidley & Austin, of Chicago, Illinois, Attorneys for petitioner filed an answer to respondent's suggestion for Rehearing In Banc.

Appeal from: U.S. District Court for the
Central District of California

Judge Real

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

ORDER

A suggestion for rehearing in banc having been filed by the RESPONDENT, and a response thereto having been invited by the court and filed by the PETITIONER, and the matter having first been referred as a petition for rehearing to the panel that heard the appeal, and the suggestion for rehearing in banc and response were thereafter circulated to judges on the panel that heard the appeal and to the remaining active judges authorized to request a poll whether to rehear the appeal in banc, and a poll having been requested, taken, and failed,

UPON CONSIDERATION THEREOF, it is

ORDERED that the petition for rehearing be, and the same hereby is, DENIED, and it is further

ORDERED that the suggestion for rehearing in banc be, and the same hereby is, DECLINED.

Circuit Judge Nies has filed a dissenting opinion, in which Chief Judge Archer and Circuit Judge Plager join.

FOR THE COURT
FRANCIS X. GINDHART
Clerk

By: /s/ Diane M. Frye
DIANE M. FRYE
Chief Deputy Clerk

Dated: July 25, 1995

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

Misc. No. 95 M428

IN RE SGS-THOMSON MICROELECTRONICS, INC.,
Petitioner.

NIES, *Circuit Judge,* dissenting from Order declining the suggestion for rehearing *in banc,* with whom ARCHER, *Chief Judge,* and PLAGER, *Circuit Judge,* join.

International Rectifier sued SGS-Thomson for patent infringement. International Rectifier sought only an injunction barring future infringement. SGS-Thomson counterclaimed for a declaratory judgment of noninfringement, invalidity, and unenforceability, and demanded a jury trial. The district court granted International Rectifier's motion to strike the jury trial demand. By a petition for a writ of mandamus, SGS-Thomson sought an order for a jury trial on its declaratory judgment counterclaims. On April 25, 1995, a panel of this court issued an Order granting SGS-Thomson's petition in part, directing the court to reinstate SGS-Thomson's jury demand, except on the equitable count of unenforceability. This court now denies International Rectifier's request for rehearing *in banc.*

The panel relied on the controlling precedent of *In re Lockwood,* 30 USPQ2d 1292 (Fed. Cir. 1994), *vacated, reh'g granted, and reh'g in banc denied,* 50 F.3d 966, 33 USPQ2d 1406, 33 USPQ2d 1907 (Fed. Cir. 1995) (*Nies, J., dissenting from denial of reh'g in banc*), *cert. granted sub nom. American Airlines, Inc. v. Lockwood,* 1995 WL 231117 (June 5, 1995). I dissent from the denial of *in banc* here for the reasons set forth in my *Lockwood* dissent.

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

Miscellaneous Docket No. 428

IN RE SGS-THOMSON MICROELECTRONICS, INC.,
Petitioner.

ON MOTION

ORDER

International Rectifier Corporation and American Airlines, Inc. request that the court reissue as precedential the court's April 25, 1995 order granting in part SGS-Thomson Microelectronics, Inc.'s petition for a writ of mandamus.

Upon consideration thereof,

IT IS ORDERED THAT:

The requests to reissue the April 25, 1995 order as precedential are denied.

FOR THE COURT

/s/ Francis X. Gindhart
FRANCIS X. GINDHART
Clerk

7-28-95

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. CV 92-6779 R

INTERNATIONAL RECTIFIER CORPORATION,
Plaintiff,

vs.

SGS-THOMSON MICROELECTRONICS, INC., and
SGS-THOMSON MICROELECTONICS, S.r.l.,
Defendants.

AND RELATED COUNTERCLAIMS

ORDER ON ST'S MOTION FOR DISMISSAL WITHOUT PREJUDICE

The ST Parties (or "ST"), defendant and counterclaimant SGS-Thomson Microelectronics, Inc. and defendant SGS-Thomson Microelectronics, S.r.l., have moved this Court (a) for an order dismissing the remaining claims in this case without prejudice, or, in the alternative, (b) for an order continuing the trial of this action (presently set for June 6, 1995), for additional discovery, and for leave to supplement the pretrial submissions.

Having read the papers filed by the parties, and good cause appearing therefor, IT IS THEREBY ORDERED AS FOLLOWS:

1. ST's motion to dismiss the remaining claims in this action without prejudice is GRANTED.

2. The Clerk is directed to enter this Order.

Dated: June 5, 1995

/s/ Manuel L. Real
MANUEL L. REAL
United States District Judge

Entered: June 7, 1995

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. CV 92-6779 R

INTERNATIONAL RECTIFIER CORPORATION,
Plaintiff,

VS.

SGS-THOMSON MICROELECTRONICS, INC., and
SGS-THOMSON MICROELECTONICS, S.r.l.,
Defendants.

AND RELATED COUNTERCLAIMS

ORDER GRANTING IN PART, INTERNATIONAL RECTIFIER'S MOTION TO AMEND ORDER OF DISMISSAL

The motion of plaintiff International Rectifier Corporation ("IR") for an order under Rule 60 amending the "Order on ST's Motion for Dismissal Without Prejudice," filed June 5 and entered June 7, 1995, came on regularly for hearing before the Court on July 3, 1995. IR and the SGS-Thomson defendants ("ST") were each represented by their respective counsel of record. Having read and considered the papers filed in support of and in opposition to the motion, and having heard the oral argument of counsel, the Court finds that the motion should be and, therefore, hereby is:

Alternative A

Denied.

Alternative B

Granted, except that the Order should be amended to the form of order submitted by ST.

More specifically, the Order on ST's Motion for Dismissal Without Prejudice is amended nunc pro tunc as follows:

1. ST's motion to dismiss the remaining claims in this action without prejudice is GRANTED.

2. The Court shall retain jurisdiction to reinstate this action on the application of any party following the pending Patent Office reexamination proceedings on IR's U.S. Patent Nos. 5,008,725 and 5,130,767. All prior rulings and orders of the Court in this action are preserved pending reinstatement of this action.

3. If and when this case is reinstated, a status conference will be held to determine how this case will proceed. Before trial, the parties may be required to file amended Contentions Memoranda and an amended Pre-Trial Conference Order.

4. The Clerk is directed to enter this Order.

Dated: Jul. 3, 1995

/s/ Manuel L. Real
HONORABLE MANUEL L. REAL
U.S. District Judge

Entered: July 5, 1995